

265 Russett Road Chestnut Hill MA 02467

Mr. Jesse Geller, Chairman

Brookline Zoning Board of Appeals

Dec 17, 2014

Dear Mr. Geller,

I would like to review the history of the waiver requests for the apartment building proposed by Chestnut Hill Realty (CHR) at Hancock Village in the context of past and future development in Brookline.

CHR may claim that the waiver requests have already been reviewed by the Building Commissioner and therefore a review is not necessary. I would like to quote Stephen Schwartz, Attorney for CHR regarding this at the December 1, 2014 meeting of the Zoning Board of Appeals. In the context of the Fire Chief's concerns about the density of the development, he stated that under 40B law, the opinion of Town departments did not matter, and only the opinion of the ZBA was considered. I therefore ask you to carefully consider the technical aspects of the height calculation.

The following table may be of value in this discussion (please note that the designation of the apartment building has changed as the plans have evolved):

Submission	Date	Waiver Request	Statement	Reference
PEL	6/10/2013	"None required"	"Less than 35'**" *Per interpretation of Zoning Bylaws Section 5.01	Attachment 1
Revised Plan	9/23/2014	"Waiver from maximum building height limitations, as calculated pursuant to Sections 5.30-5.32."	"We note that if height is calculated by reference to the nearest abutting lot located outside of Hancock Village, no waiver for height would be required."	Attachment 2
Final Plan	12/11/2014	"See separate "Building Height Calculation Plan" prepared by Stantec dated December 11, 2014."	"Building 12 will have a height of approximately 237.44', which is approximately 21.66' over the allowed height of 215.78'."	Attachment 3

PEL=Project Eligibility Letter to MassDevelopment

You will note several statements that are inconsistent with the Zoning Bylaws:

1. The height of the building is given in the Elevation (attachment 4) as 41.9 feet from the garage to the roof, stated as the "Finish Floor Elevation". However, this measurement is not recognized in the Bylaws which clearly state that "Height shall be measured from the record grade of the street opposite the midpoint of the street frontage of the lot" (Bylaws 5-51). The height of the "finish floor" is irrelevant for zoning purposes. You will also note that this diagram does not show the decorative facing that is shown on the other plans (attachment 5).
2. The waiver list states that the allowed height is 216.3 feet. The calculation box (using the formula stated as "Method C") lists either 215.78 or 256.34 (attachment 6). I do not see any explanation of the 216.3 feet.
3. The actual height allowed by Brookline Bylaws is 35 feet over the record grade at the midpoint of the lot which would be 211.8 by their calculations. Any attempt to use Section 5.30 would result in a *lower* allowed height.
4. The actual height of the building, as defined in Brookline Bylaws (assuming the garages are 10 feet in height each, not shown on the plans but previously prevented) is 61.94 feet above street level in an area zoned for 35 feet—nearly double the Brookline zoning policy if the decorative facings are included.
5. The requested waiver of 21.1 feet would, by Brookline Bylaws, allow the two level parking garage and three residential levels.
6. The "Building Height Chart" (attachment 6) continues to use a formula for height calculation that is completely opposed to the spirit and letter of the Zoning Bylaws, and has no basis in previous ZBA opinions, allowing virtually unlimited building height.

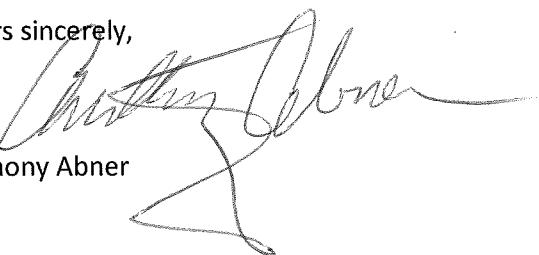
I have previously stated that the CHR interpretation of the Zoning Bylaws is erroneous and is clearly at odds with the diagram that accompanies the written description. The diagram in Section 5.30 (attachment 7) explicitly shows that the height of a building on a hill must be *less* than the Bylaws otherwise allow. By the CHR interpretation, there is essentially unlimited building height, and as shown in Attachment 8, a one foot slope would allow a building of over 600 feet tall if a plot of land $\frac{1}{2}$ mile long with a slope of 1 foot is available (attachment 8).

Why am I concerned about this when CHR is now stating that they require a waiver? I believe that this pseudo-formula must be explicitly rejected by the ZBA for future development. In the coming decade, it is certainly possible that relatively undeveloped parcels of land in Brookline may become available and we do not want other parties claiming that this formula has been legitimized by the ZBA in the Hancock Village case and is therefore applicable to other sites.

I therefore request that the ZBA specifically state in your final opinion that you do not recognize the CHR formula as an accurate interpretation of Brookline Zoning Bylaws, that this does not exist in the Zoning

Bylaws, and that future developments cannot use this as a justification for buildings that exceed the height limitations of Table 5.01 of the Zoning Bylaws.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Anthony Abner".

Anthony Abner

Attachment 1: Project Eligibility Letter

Dimensional Zoning Analysis and Waiver List

ZONING EAST (Parcels 2 and 3)

DISTRICT: M-0.5	REQUIRED	PROPOSED	WAIVER
Lot Size	5,000 SF	119,187 SF	N
Lot Width	NA	N/A	
Frontage	20'	N/A	Y
Minimum Yard Setbacks			
Front	15'	187'-11"	N
Side	10+L/10	14'-6"***	Y
Rear	30'	4'-7"****	Y
Height	35'	less than 35'*	N
Allowed Units	52	116	Y
FAR	0.50	1.10	Y
Use	Multi-family	Multi-family	N
Open Space			
Landscaped	10% of GFA	19%	N
Useable	30% of GFA	2%	Y

DISTRICT: S-7	REQUIRED	PROPOSED	WAIVER
Lot Size	7,000 SF	165,970SF	N
Lot Width	65'	11.5'	Y
Frontage	25'	105.5' INDEP. DRIVE	N
Minimum Yard Setbacks			
Front	30'	22'-8" **	Y
Side	20'	20' *****	Y
Rear	40'	40' *****	Y
Height	35'	less than 35'*	N
Allowed Units	31	40	Y
FAR	0.35	0.36	Y
Use	Single Family	Multi-family	Y
Open Space			
Landscaped	30% of GFA	35%	N
Useable	None	N/A	N

* Per interpretation of Zoning Bylaws Section 5.01, Table of Dimensional Requirements

** Aligns with Abutting Buildings

*** waiver required 4'-6" to proposed Hancock Village lease line. No waiver required for 10+L/10 side setback to Russett Road Abutting Building Line.

**** waiver required 4'-7" to proposed Hancock Village lease line. No waiver required for 40' rear setback to VFW Parkway Abutting Building Line.

***** waiver required 2'-2" to proposed Hancock Village lease line. No waiver required for 20' side setback to Russett Road Abutting Building Line.

***** waiver required 4'-9" to proposed Hancock Village lease line. No waiver required for 40' rear setback to VFW Parkway Abutting Building Line.

5.01	Space			floor area on each lot will be usable open space.	is approximately 19% of the gross floor area of the structure on Lot E2 in the M-0.5 District.
§6.02, Paragraph 1, Table of Off-Street Parking Requirements	Number of Parking Spaces per Dwelling Unit	M-0.5	E2	Waiver from the requirement to provide 2.0 spaces per 1 and 2 bedroom unit and 2.3 per 3-bedroom units	On Lot E2 in the M-0.5 District, the Development will provide 1.4 parking spaces per 1 or 2-bedroom dwelling unit. Site-wide, 2 parking spaces per 1 or 2-bedroom dwelling unit and 2.3 parking spaces per 3-bedroom unit will be provided.
§6.04	Design of Off-Street Parking Facilities	S-7; M-0.5	W, E1, E2, E3	Waiver from minimum aisle width of 24'.	The Development will provide minimum aisle width of 23'.
§5.30-5.32 and Table 5.01	Maximum Height of Buildings	M-0.5	E2	Waiver from maximum building height limitations, as calculated pursuant to Sections 5.30-5.32.	Building 10 will have a height of approx. 52.42' as measured in accordance with the calculations set forth in Section 5.30-5.32 of the Zoning Bylaw. We note that if height is calculated by reference to the nearest abutting lot located outside of Hancock Village, no waiver for height would be required. ⁴

Brookline General Bylaws

Bylaw Section	Requirement	Requested Waiver or Waiver	Details of Proposal Requiring Waiver	Waiver No.
5.10.3.d	Neighborhood Conservation District	W, E1, E2, E3	Waiver from conservation district permit requirements and applicable design standards and restrictions.	P Comprehensive Permit as may be granted by Zoning Board of Appeals shall provide all local permits per MGL c. 40B.

⁴ See separate "Building Height Calculation Plan" prepared by Stantec dated September 23, 2014.

Attachment 3 : Final waiver list

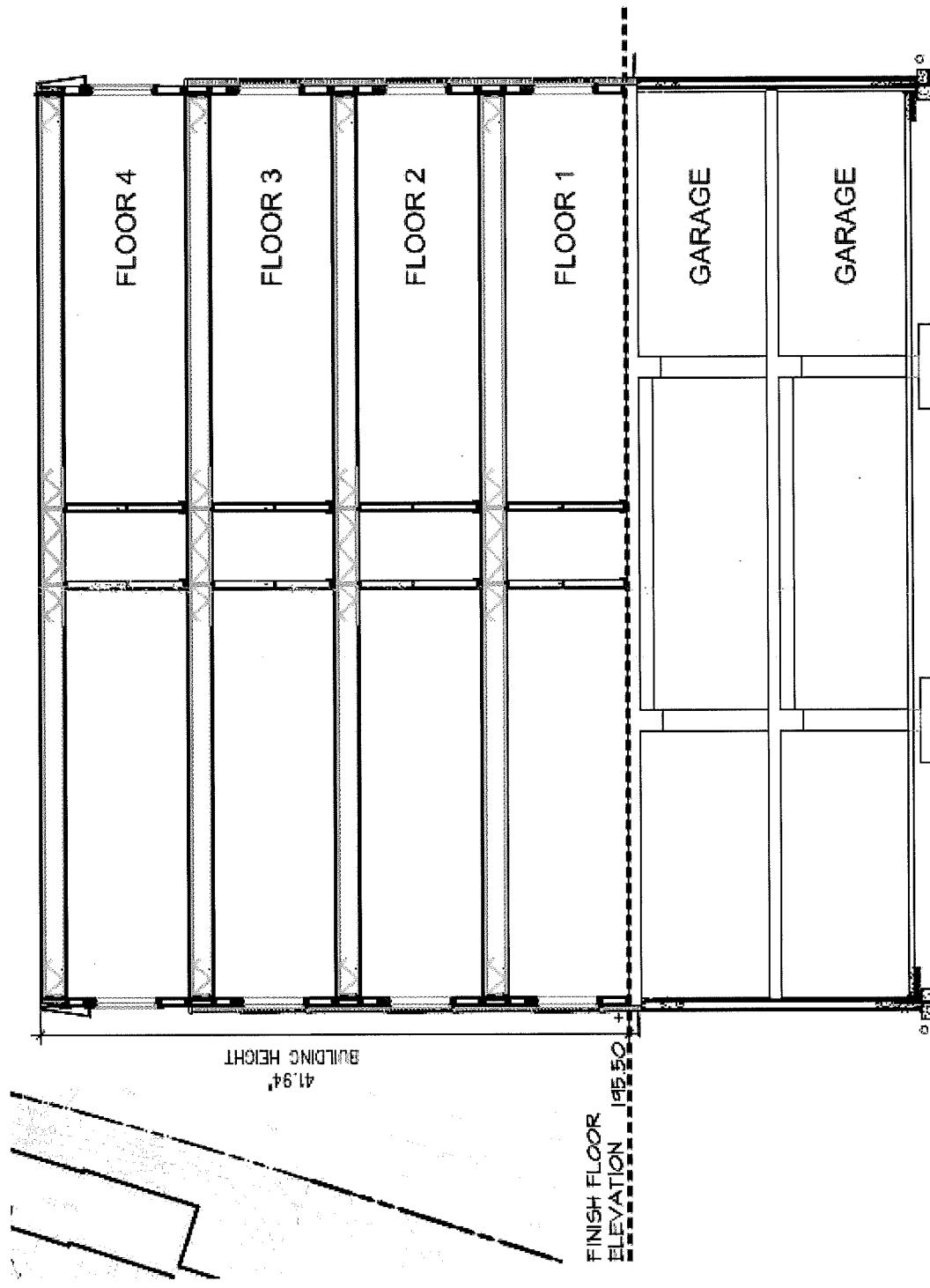
§5.10, §5.12, and Table 5.01	Minimum Lot Size, Minimum Lot Area Per Dwelling Unit	M-0.5	E2, W	Waiver from minimum lot size of 3,000 sf for first dwelling unit and 2,000 sf for each additional dwelling unit.	On Lot E2, the Development will have a lot size of approximately 89,266 sf within the M-0.5 District, allowing 44 total units. On Lot W, the Development will have a lot size of approximately 8,270 sf within the M-0.5 District, allowing 3,64 total units. Within the M-0.5 District, the Development will include approximately 109 on Lot E2 and 4 units on Lot W. The entire development will have a lot size of approximately 379,933 sf, allowing a total of 189 units (161 units are proposed). G
§5.20 and Table 5.01	Maximum FAR	S-7 M-0.5	E1, E2, W	Waiver from maximum ratios of gross floor area to lot area (0.5 in M-0.5 district and 0.35 in the S-7 District).	On Lot E1, the Development will have a FAR of approximately 0.51. On Lot E2, within the M-0.5 District, the Development will have an FAR of approximately 1.44. On Lot W, within the M-0.5 District, the Development will have an FAR of approximately 0.88. The entire Development will have an FAR of approximately 0.57. H
§5.30-5.32 and Table 5.01	Maximum Height of Buildings	S-7 M-0.5	W, E1, E2	Waiver from maximum building height limitations, as calculated pursuant to Sections 5.30-5.32. ²	On Lot W, Building 1 will have a height of approximately 206.83', which is approximately 6.2' over the allowed height of 200.63'. Building 2 will have a height of approximately 203.83', which is approximately 3.2' over the allowed height of 200.63'. Building 3 will have a height of approximately 199.83', which is approximately 0.57' over the allowed height of 199.26'. On Lot E1, Building 5 will have a height of approximately 199.33', which is approximately 0.93' over the allowed height of 198.40'. Building 6 will have a height of approximately 206.33', which is approximately 2.13' over the allowed height of 204.20'. Building 7 will have a height of approximately 211.13', which is approximately 7.13' over the allowed height of 204.20'. On Lot E2,

² See separate "Building Height Calculation Plan" prepared by Stantec dated December 11, 2014. All height measurements provided in this table represent the building's elevation above the Brookline Town Base Elevation.

					Building 12 will have a height of approximately 237.44', which is approximately 21.66' over the allowed height of 215.78'.
§5.50 and Table 5.01	Minimum Front Yard ³	S-7; M-0.5	W, E1, E2, E3	Waiver from 30' minimum front yard requirement.	Minimum 19'6" setback provided for Building J 4. Minimum 22' setback provided for Building 5. Minimum 8' setback provided for Building 12. Minimum 3' setback provided for Building 9.
§5.55	Front Yard for Rear Lot	S-7	W	Waiver to allow less than required front yard depth for building located on rear lot.	Building 3 will be set back approximately 1' from lot line parallel to Independence Drive K
§5.60, §5.62 and Table 5.01	Minimum Side Yard ³	M-0.5	E2	Waiver from minimum side yard requirement of $10 + L/10$ (where "L" is the dimension of that portion of the wall required to be set back from the side lot line).	Minimum 10' setback provided for Building L 12.
		S-7	W, E1, E2, E3	Waiver from minimum side yard requirement of 20' and to allow retaining walls in excess of 7' in height within required side setback areas.	Minimum 2'4" setback provided for Building M 1. Minimum 1' setback provided for Building 3. Minimum 4' provided for Building 7. Minimum 5' provided for Building 8. Minimum 6' setback provided for Building 9. Minimum 7'3" setback provided for Building 10. Minimum 10' setback provided for Building 11. Retaining walls within side yards of Buildings 9 and 12 may exceed 7' in height.
§5.70 and Table 5.01	Minimum Rear Yard ³	M-0.5	E2	Waiver from 30' minimum rear yard requirement.	Minimum 19' setback provided for Building N 12.
§5.91 and Table	Minimum	M-0.5	W, E2	Waiver from the requirement	On Lot W, within the M-0.5 District, 0 sf of P

³ Section 5.40 of the Zoning Bylaw allows for a less restrictive interpretation of minimum yard requirements where a structure is not parallel to the lot line; for the sake of clarity, all minimum yard requirements have been applied as if the buildings were parallel to lot lines.

Attachment 4 : Apartment elevation



Residences of South Brookline



ZONING BY-LAW**TOWN OF BROOKLINE**

be measured as follows:

1. Where the lot abuts other lots to the rear which are subject to the same or less restrictive height limitations:
 - a. Height shall be measured from the record grade of the street opposite the midpoint of the street frontage of the lot, or, if a corner lot, of the street frontage having the lower record grade.
 - b. Where the grade of the natural ground contiguous to the building is higher than said record grade, height may be measured from the mean grade of said natural grade, except if said mean grade is higher than the mean natural grade of any abutting lot at the lot line.

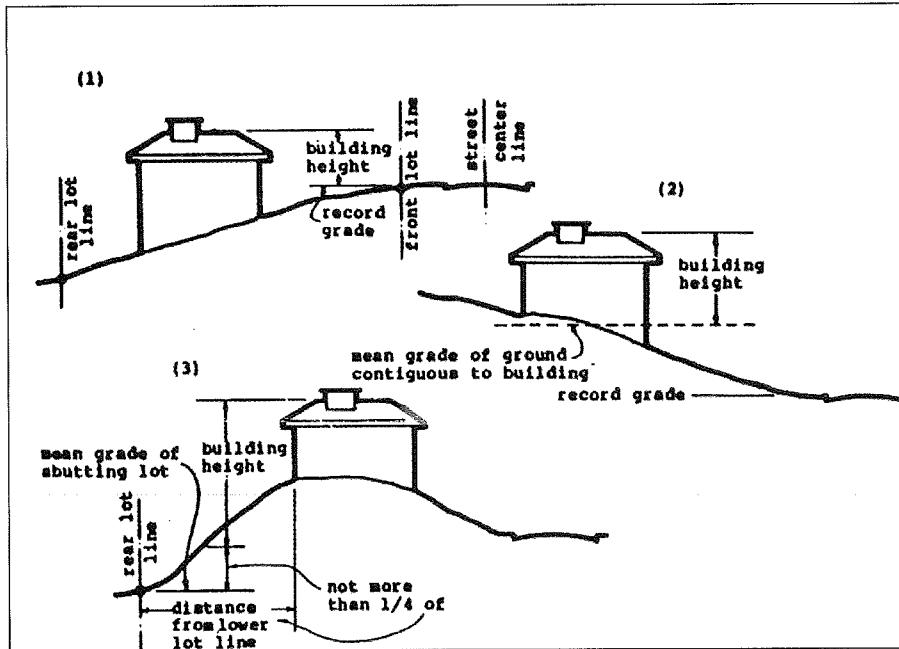


Figure 5.05 - Measurement of Building Height When the Rear Abutting Lot is Subject to Same or Less Restrictive Height Limitation

- c. Where the mean grade of the natural ground contiguous to the building is higher than both the record grade of the street and the mean natural grade of any abutting lot at the lot line, height shall be measured from a level not exceeding the mean grade of the lowest of any lot by more than one-fourth of the distance between the building and said abutting lot line.
2. Where the lot abuts other lots to the rear which are subject to more restrictive height limitations:
 - a. For a building or buildings on a lot not more than 160 feet in any dimension:
 - 1) Height shall be measured from the record grade of the street opposite the midpoint of the street frontage of the lot, or, if a corner lot, of the street frontage having the lower record grade.

CTR Interpretation:

2640/4 + 35-1

